

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

BLUE SPIKE, LLC : DOCKET NO. 6:12CV499  
:  
VS. : TYLER, TEXAS  
:  
TEXAS INSTRUMENTS, ET AL : MARCH 5, 2014  
:  
10:00 A.M.

STATUS CONFERENCE  
BEFORE THE HONORABLE MICHAEL H. SCHNEIDER,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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PROCEEDINGS REPORTED BY MECHANICAL STENOGRAPHY, TRANSCRIPT  
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

1 THE COURT: Good morning, everyone.

2 COUNSEL: Good morning, Your Honor.

3 THE COURT: Glad to see everybody here with this  
4 weather issue.

5 We're here in Cause Number 6:12CV499. The shorthand  
6 rendition of the caption is Blue Spike versus Texas  
7 Instruments, et al.

8 We'll get started this morning. Let me just make a  
9 quick statement about the goals here this morning or what  
10 we're going to be looking at. The purpose obviously to the  
11 Court of this hearing is to, number one, determine the  
12 primary issues in the case and develop a plan to quickly  
13 reach those particular issues, and second, explore the case  
14 management options for efficient and final resolution of all  
15 the claims here.

16 Now, I'm going to ask that we get started by having the  
17 parties introduce themselves. I'm going to have you, if you  
18 would, please -- we can do this by starting out with the  
19 Plaintiff and then we'll try to get some sense of order for  
20 the Defendants. One thing we could do for the Defendants is  
21 go ahead and -- or what we will do is introduce you by -- I  
22 guess in order of the filings. I'm trying to look here and  
23 see how that's done. Okay. Tell you what, let's just --  
24 we'll go around the room. We'll go around the table and  
25 then the room. Don't worry about the order on this. And

1 then we'll go from there.

2 Please, if the Plaintiffs could introduce yourself and  
3 state whether or not you're ready to proceed.

4 MR. GARTEISER: Your Honor, Randall Garteiser for  
5 Plaintiff Blue Spike. With me today are my colleagues,  
6 Christopher Honea, Christopher Johns, Kirk Anderson and Peter  
7 Brasher.

8 THE COURT: All right. Thank you.

9 MR. GARTEISER: We're ready to proceed.

10 THE COURT: All right. Welcome.

11 MR. DACUS: Good morning, Judge. Deron Dacus here  
12 with my colleague Pete Kerr from our office. Also Eugene Mar  
13 from Farella Braun & Martel, Your Honor. We're here on behalf  
14 of Adobe and Facebook, and we are ready to proceed, Your Honor.

15 THE COURT: All right. Thank you. Welcome.

16 MR. LEE: Good morning, Your Honor. Lance Lee and  
17 with me is Mr. Wallace Wu of Arnold and Porter. We're here on  
18 behalf of Google and we're ready to proceed.

19 THE COURT: All right. Thank you. Good morning to  
20 you.

21 MR. GILLAM: Good morning, Your Honor. Gil Gillam on  
22 behalf of Iris ID, ready to proceed.

23 THE COURT: Good morning, sir.

24 MR. GARDNER: Good morning, Your Honor. Allen  
25 Gardner here on behalf of ACTV8, Entropic, Ensequence, Shazam

1 and ImageWare, sir, and we are ready to proceed.

2 THE COURT: Did ACTV8 reach any type of settlement  
3 agreement? I saw where you had been talking about it.

4 MR. GARDNER: Yes, Your Honor, we reached a  
5 settlement in principle with the Plaintiff and we anticipate we  
6 will be filing dismissal papers in the near future.

7 THE COURT: Is that correct?

8 MR. GARTEISER: That's correct.

9 THE COURT: All right. Thanks. Yes, sir.

10 MR. LACY KUSTERS: David Lacy Kusters on behalf of  
11 Zeitera, Soundhound, Infinisource, Qquest, SMRTV, Nielsen  
12 Company, and specially appearing on behalf of Aoptics  
13 Technologies.

14 THE COURT: All right, sir. Thank you.

15 MR. FINDLAY: Good morning, Your Honor. Eric Findlay  
16 and Gabe Ramsey here on behalf of the Audible Magic Defendants  
17 and a whole slew of Defendants known as their customers, and  
18 then, Your Honor, I'm also here on behalf of Viggle,  
19 Incorporated with Mr. Jordan Sigale. I'm also here on behalf  
20 of Contributor Corporation, iPharro Media, BMAT Licensing,  
21 Fulcrum Biometrics, NEUROtechnology, Iritech, Inc., M2SYS, LLC  
22 and Futronic Technology. We're ready to proceed, Your Honor.

23 THE COURT: Thank you, sir.

24 MS. SMITH: Good morning, Your Honor. Melissa Smith  
25 on behalf of Airborne Biometrics, Precise Biometrics,

1 SpeechPro, Speech Tech and TuneCore to the extent the dismissal  
2 has not yet been ordered, and we're all ready to proceed, Your  
3 Honor.

4 THE COURT: Thank you.

5 MS. SMITH: Thank you.

6 MR. SMITH: Your Honor, Michael Smith for Axxonsoft  
7 U.S. and Axxonsoft, Limited, and we're ready to proceed, Your  
8 Honor.

9 THE COURT: Good morning.

10 MR. HILL: Good morning, Your Honor. Wesley Hill on  
11 behalf of Technicolor USA, Inc. and Technicolor SA. Your  
12 Honor, I can announce that my clients and the Plaintiff have  
13 reached an agreement for the dismissal of the Technicolor  
14 entities. We're working on formalizing that but we expect it  
15 to be agreed and the dismissal papers filed very shortly.

16 THE COURT: All right. Thank you. Good morning.

17 MS. PFEIFFER: Good morning, Your Honor. Sarah  
18 Pfeiffer for Clear Channel Broadcasting, Inc., and we're ready  
19 to proceed.

20 THE COURT: Thank you.

21 MR. DAVIS: Good morning, Your Honor. Tom Davis from  
22 Morgan Lewis on behalf of MorphoTrust, MorphoTrak, Safran, L-1  
23 and Kronos, and we're all ready to proceed.

24 THE COURT: Good morning. All the way from Houston?

25 MR. DAVIS: Yes, sir.



1 THE COURT: All right, sir. Thank you. He gets  
2 special privileges.

3 MR. STUBBS: Good morning, Your Honor. Sam Stubbs  
4 for Defendant Vobile, ready to proceed.

5 THE COURT: Thank you.

6 MR. BEARD: Good morning, Your Honor. Ryan Beard on  
7 behalf of Soundmouse and the two Cognitec entities, and we're  
8 ready to proceed.

9 THE COURT: All right. Thank you, sir.

10 MR. MCNEAL: Good morning, Your Honor. Quinncy  
11 McNeal, also from Houston.

12 THE COURT: Do I have to say anything?

13 (Laughter.)

14 MR. MCNEAL: On behalf of Civolution BV and  
15 Civolution USA, and we are ready to proceed.

16 THE COURT: All right. Thank you, sir.

17 MS. JENKINS: Good morning, Your Honor. Dawn Jenkins  
18 on behalf of Irdeto USA and Irdeto BV, and we're ready to  
19 proceed.

20 THE COURT: Good morning.

21 MR. PERITO: Good morning, Your Honor. Andrew Perito  
22 on behalf of CBS Interactive, CBS Corp and Last.fm, Limited,  
23 and we are ready to proceed, Your Honor.

24 THE COURT: Thank you, sir.

25 MS. HOUSTON: Good morning, Your Honor. Andrea

1 Houston on behalf of 3M Cogent, Inc., ZK Technology, LLC, ZK  
2 Software Biometric Identification Technology Company, Limited,  
3 and we are all also ready to proceed.

4 THE COURT: Good morning.

5 MS. HOUSTON: Good morning.

6 MR. HUNTSMAN: Good morning, Your Honor. Robert  
7 Huntsman representing Zvetco, LLC, and we're ready to proceed.

8 THE COURT: All right. Thank you, sir.

9 All right. For the record, and I don't hold anybody to  
10 what I'm going to say here, but the best I can tell from the  
11 allegation, the case involves digital content recognition or  
12 signal abstracting technology.

13 The Plaintiff asserts claims against dozens of  
14 Defendants for allegedly infringing four related patents,  
15 all from the same patent family.

16 The Defendants have filed a number of fairly standard  
17 answers or defenses, such as invalidity and  
18 unenforceability. I might also point out that the Audible  
19 Magic Defendants have also filed counterclaims for unjust  
20 enrichment, false advertising and infringement of Audible  
21 Magic's patent, and that's Patent No. 6,834,308.

22 Now, I want to thank everyone for what I know was a  
23 difficult job of putting together the Rule 26 report. It's  
24 very helpful to me. I know that it's quite a job on your  
25 part to get that done, especially with the manageable -- the

1 management problems that you have of getting together.

2 I would point out though for the Plaintiff, if you  
3 would, if you file any more cases in court, I'm serious  
4 about telling me a little bit more about your facts in your  
5 report. I use this report from time to time throughout the  
6 case to go back and take a quick look to refresh my memory  
7 on the case. It's very helpful when you don't just  
8 regurgitate your pleadings. But make that note, without any  
9 punishment involved. I'll just make that observation.

10 In looking at your report, it looks like there are a  
11 lot of issues. I'm not sure I'll cover all of the options  
12 of what could be done to manage the case. I guess the first  
13 obvious thing is to look at grouping the Defendants.

14 There's been a proposal that we have early or multiple  
15 claim construction hearings. Another was a suggestion for  
16 bellwether trials. Another was to defer until transfers  
17 have been ruled upon and a temporary stay until -- well,  
18 actually there was one suggestion that at least, if I rule  
19 on the motion to transfer, to stay the effect of those.

20 The other -- another option was to stay this case until  
21 all the transfers and venue issues have been decided and  
22 motions to dismiss and so forth.

23 Another option is to appoint a special master and -- a  
24 special master, and there are several areas or stages in the  
25 litigation that could occur. One would be to -- the most

1 obvious is to handle the grouping issues. Second was  
2 perhaps discovery matters and, of course, third might be for  
3 any other purposes that might arise during the case where it  
4 seemed like it might be -- might make sense.

5 Another option, some things that have occurred since we  
6 talked last is the Track B expedited supplemental  
7 disclosures rule that we recently adopted. We've looked at  
8 a number of these things.

9 And, again, I do appreciate your input and I can  
10 understand the concern on a number of people -- on the part  
11 of a number of people that seem to recur when we have a case  
12 with what we sometimes refer to as serial defendants. But  
13 these cases having at least 50 defendants do present unique  
14 scheduling issues and so we try to figure out what we can do  
15 most efficiently and the least expensively and, of course, a  
16 sense of fairness. And that's what we're striving for here  
17 today.

18 Now, I believe that we handled -- who was it that  
19 represented Animetrics? There were so many Defendants here.  
20 Is anybody here representing Animetrics? Okay. Your case  
21 is set for trial this afternoon.

22 (Laughter.)

23 MR. HONEA: Your Honor, if I may, there was a  
24 settlement and an agreed motion to dismiss was filed.

25 THE COURT: Yeah, and that's really what I wanted to

1 clarify. I didn't see that. Was that pretty much settled?

2 MR. HONEA: Yes, Your Honor, it was settled and there  
3 was an agreed motion filed yesterday.

4 THE COURT: Thank you. You filed that yesterday?

5 MR. HONEA: Yes, Your Honor.

6 THE COURT: I'm sorry, I wasn't here.

7 MR. HONEA: Yes.

8 THE COURT: All right. We've got it. All right.  
9 We'll move on from there. We're already making progress this  
10 morning.

11 Okay. Now, I would like to hear from various people,  
12 and let me just say that we do -- just for the benefit of  
13 the -- a lot of you, I know, say they don't get much out of  
14 scheduling conferences and for people that this is costing a  
15 lot of money for you to be here, that you don't feel it's  
16 directly related to your responsibility in the case, let's  
17 be as brief as possible. I've read all of your papers that  
18 you filed with me, so we don't need to repeat a lot of that  
19 other than just to give me a sketch of what comments you  
20 might quickly add or re-emphasize the importance of.

21 So let's start out with either Mr. Honea -- was it Mr.  
22 Honea?

23 MR. HONEA: Yes, Your Honor.

24 THE COURT: I'm sorry. That was --

25 MR. HONEA: Mr. Honea, Your Honor. Very well. Most

1 people don't get that on the first try.

2 THE COURT: Okay.

3 MR. HONEA: Your Honor, I believe, and I don't want  
4 to speak for the Defendants, that we're reasonably close to a  
5 lot of agreements on the Scheduling Order. Three things that  
6 probably stick out, one would be that they want an extra month  
7 for invalidity contentions.

8 THE COURT: An extra month for what? I'm sorry.

9 MR. HONEA: I'm sorry. For them to serve invalidity  
10 contentions. We don't believe that they need an extra month,  
11 but if Your Honor is so inclined, we would be fine with that  
12 just to make a compromise.

13 The second, which is a little more contentious most  
14 likely, is that they would like to backtrack and second  
15 phase damages discovery, and we believe that to truly get to  
16 some quick and efficient resolutions that it's reasonable  
17 that damages discovery takes place on the same track with  
18 the other issues in the cases so that the parties know what  
19 we're dealing with as far as damages and financials.

20 And then the last, I think the third bigger issue so  
21 far that probably is coming out is the two phases for  
22 suppliers and customers, and we are not opposed to that in  
23 principle but we would like, as we pointed out in the joint  
24 statement, to have preclusive effect from the supplier  
25 trials on the customer Defendants, other than willfulness

1 and damages, to truly create an efficient, streamlined  
2 approach and to save everyone costs and judicial resources.  
3 We think that it doesn't make sense to split it up if we're  
4 not going to actually have some sort of binding effect on  
5 the customers.

6 So those are the three big issues that have kind of  
7 come out. I believe that the Defendants may point out that  
8 there are some Protective Order issues that they would like  
9 to address and some modifications to Your Honor's  
10 E-Discovery Order that you've entered already. We're taking  
11 a look at that. They have -- they are quite extensive on  
12 their recommendations, but we think that right now we prefer  
13 to stick with Your Honor's proposed Protective Order and  
14 E-Discovery Order, but we're still willing to try and work  
15 out some of those before initial disclosures are due on  
16 April 4th.

17 THE COURT: All right, sir. Thank you, sir.

18 MR. HONEA: Thank you, Your Honor.

19 THE COURT: All right. Anyone want to speak on  
20 behalf of the Defendants? And understand that while -- I mean,  
21 these groups here as far as talking this morning, it's very  
22 much appreciated when you're able to consolidate your  
23 positions. And if somebody earnestly feels like they need to  
24 add something, we certainly will give you that opportunity.

25 Mr. Dacus.

1 MR. DACUS: Thank you, Your Honor. And I'm glad the  
2 Court said that because I will attempt to speak very globally  
3 on behalf of the Defendants, but certainly without any  
4 preclusion for others standing up and voicing their opinions.

5 To address those issues that the Plaintiffs just  
6 addressed, the Defendants have asked for a brief extension  
7 on the invalidity contentions. We do feel strongly about  
8 that issue, but there are a couple of issues bound up in  
9 that that I want to make the Court aware of.

10 We do have the Plaintiff's contentions. I'll be very  
11 forthright with the Court in telling the Court, as we've  
12 said to the Plaintiff, we think there are some significant  
13 deficiencies in those contentions and we're going to work  
14 with the Plaintiff to try to address those. And if we don't  
15 get some relief from the Plaintiff, we're going to have to  
16 come to the Court and ask for some relief here on the  
17 sufficiency of those.

18 The second issue that comes up related to the  
19 invalidity contentions is just the sheer number of claims,  
20 Your Honor. We've got I think 110 or 115 claims being  
21 asserted.

22 THE COURT: Right.

23 MR. DACUS: So these Defendants are being asked to go  
24 do invalidity contentions on 110 or 115 claims. We have not  
25 yet asked the Court but it's certainly something we think we



1 might do in the very near future to ask the Court to limit the  
2 number of claims being asserted in the case, even at an earlier  
3 stage than what the model order requires, because as of now  
4 we're being asked to go do contentions on a hundred plus claims  
5 and we think that's excessive in this case. Really, in any  
6 case but certainly in this case.

7 So that's the issues with respect to the invalidity  
8 contentions and the purpose of the Defendants asking for  
9 some additional time.

10 With respect to the damage discovery, the Plaintiffs  
11 are right. The Defendants' position is that the damage  
12 discovery should be delayed. That, of course, does not in  
13 any way preclude any Defendant from providing, you know,  
14 summary sales information to the Plaintiff if they deem it  
15 necessary. And the Plaintiffs, you know, I think made some  
16 reference to the fact that they thought it was necessary to  
17 further some settlement discussions. Certainly any  
18 Defendant who wants to have those discussions is free to  
19 provide summary damage information before the actual  
20 deadline.

21 And then with respect to the two-phase trial proposal,  
22 I think the Plaintiffs and Defendants are basically in  
23 agreement on splitting it into what we've termed, quote  
24 unquote, suppliers and customers, with the different trial  
25 schedules and the different discovery schedules associated

1 with it. There may remain a discussion to be had about  
2 exactly the preclusive effect of those initial trials, but  
3 in general we're in agreement that there should be two  
4 phases.

5 THE COURT: All right, sir.

6 MR. DACUS: So that's where the Defendants are on a  
7 general basis, Your Honor. I'm happy to answer any questions  
8 that you might have.

9 THE COURT: None yet. Does anybody over here want to  
10 top up what -- did you speak for all, globally for all of them?

11 MR. DACUS: That was my attempt, Your Honor, but I by  
12 no means -- if someone thinks I got it wrong or thinks there's  
13 something to add, I certainly welcome them to add that.

14 THE COURT: Okay. Thank you.

15 MR. RAMSEY: Your Honor, I might add something about  
16 the -- Gabriel Ramsey for Audible Magic and its customers.

17 I'll just add a gloss about the customer/supplier  
18 bifurcation issue. We are in general agreement with the  
19 Plaintiff. This was our proposal to put the customer  
20 proceedings off to much later, let the suppliers like  
21 Audible Magic litigate the merits of their own technology.

22 Here's what we see today. We can see that the  
23 Plaintiff is accusing these customers based solely -- we've  
24 got their infringement contentions now. They seem to be  
25 accused solely based on Audible Magic's technology. There's

1 nothing beyond that, and that makes sense. I mean, this was  
2 our assumption even before we saw the infringement  
3 contentions.

4 We're fine being -- having the customers be bound by  
5 any infringement determination as to Audible Magic's  
6 technology.

7 THE COURT: With no qualifications, right?

8 MR. RAMSEY: With a very small caveat, Your Honor. I  
9 cannot predict what might change in the future. We must have  
10 at least in concept the door open that we can come back here  
11 and say, Your Honor, the theory changed. I don't expect that  
12 to happen. It could. And we just want to keep the door open  
13 so that if we need to come back a year from now in the second  
14 phase and say the theory actually is adjusted a little bit, we  
15 need -- you know, we want to keep the door open to additional  
16 arguments that we didn't anticipate. We just -- in principle  
17 we need to have that in place. I don't think as a practical  
18 matter that that is likely to arise, frankly, the way the  
19 technology is accused.

20 THE COURT: All right, sir. Well, I appreciate that  
21 gloss. Thank you.

22 MR. DACUS: Your Honor, I failed to mention something  
23 that I know the group wants me to mention, and I know I'll be  
24 the one falling on the sword for this. But I do think it's an  
25 important issue, and the Court mentioned it earlier, these

1 motions to transfer venue that have been filed and the motions  
2 to stay related to it. Obviously there are a lot of Defendants  
3 who have filed those motions and that --

4 THE COURT: I'm going to give you some rulings on  
5 some of those, most of those this morning, all right?

6 MR. DACUS: Okay. Thank you, Your Honor. I just  
7 obviously wanted to remind the Court that could drastically  
8 change the face of what this case looks like.

9 THE COURT: I understand that, and let me -- you're  
10 talking about jumping on a sword. Let me do something here  
11 just a second. I actually am to blame for that, not just  
12 responsible but to blame for that. There have been a number  
13 of -- there have just been a number of things that have  
14 occurred, and frankly, I think I dropped the ball on it. And  
15 I'm here to tell you that I should have ruled on it much  
16 earlier.

17 I don't know that I have ever done this, even  
18 apologized like this in my career, but I will tell you this,  
19 it's -- it's something that -- it is what is there. I mean,  
20 we just have to work from there, all right? And it's -- I  
21 guess I'm in a better position to make mistakes than maybe  
22 you are. I don't know.

23 MR. DACUS: I don't think there's any doubt about  
24 that, Judge.

25 THE COURT: And I don't mean that in any way but the

1 way that I said it, and that is that in this situation I'm  
2 going to rule on a number of them today and have a ruling on  
3 those others here real quick. And I hope that this doesn't  
4 happen again, all right?

5 MR. DACUS: Much appreciated, Your Honor. Thank you.

6 THE COURT: Thank you.

7 MR. GARDNER: Your Honor, Allen Gardner. Can I say  
8 one thing, sir?

9 THE COURT: Yes, sir, but I've already accepted the  
10 blame, Mr. Gardner.

11 MR. GARDNER: No, sir, this has nothing to do with  
12 venue transfers.

13 THE COURT: No piling on, right?

14 MR. GARDNER: No, sir, no piling on, sir. This  
15 relates to one of my clients, Ensequence, sir. We filed a  
16 motion to dismiss for lack of personal jurisdiction.

17 THE COURT: Which Defendant is that?

18 MR. GARDNER: Sir, it's Ensequence. You dismissed my  
19 client for lack of personal jurisdiction. Plaintiff has filed  
20 a motion to reconsider.

21 THE COURT: Yes, I'm going to rule on that in just a  
22 minute.

23 MR. GARDNER: Thank you, sir.

24 THE COURT: Thank you. Appreciate that.

25 MR. LACY KUSTERS: David Lacy Kusters. Just a

1 slightly different issue on the scheduling. There's a small  
2 group of Defendants that have a license defense.

3 THE COURT: Right.

4 MR. LACY KUSTERS: And want the ability to bring an  
5 early summary judgment on their license or patent exhaustion  
6 defenses and a stay of unrelated discovery until those are  
7 resolved.

8 THE COURT: Right. And I will deny the stay but  
9 we'll have you a quick ruling on the other, okay? All right.  
10 Thank you.

11 Anything else?

12 All right. Now, I'll just give you some of my thoughts  
13 on where I'm -- let me first give you some rulings, like I  
14 promised you.

15 On your -- on Blue Tech's motion to reconsider the  
16 Ensequence ruling previously made by the Court dismissing  
17 for lack of personal jurisdiction, that's denied. I'll have  
18 a memorandum confirming that.

19 The motion to stay discovery is denied as moot. That  
20 would be Document 1243.

21 The other was Document 1028. That was Document 1028,  
22 that was the motion to reconsider that was denied.

23 Technicolor's motion to dismiss for lack of personal  
24 jurisdiction, no proper venue and insufficient process,  
25 that's granted. That's Document 560.

1 This is Cognitec Systems Corporation's motion to  
2 dismiss for lack of personal jurisdiction, that's Document  
3 625, that's denied.

4 Cognitec System GmbH motion to dismiss for lack of  
5 personal jurisdiction, Number 626, I'm denying that without  
6 prejudice.

7 Plaintiff's motion for jurisdictional discovery from  
8 the Cognitec Defendants, Number 807, I will grant that to  
9 allow discovery of the corporate relationship between the  
10 two Cognitec entities.

11 Soundmouse's motion to dismiss for lack of personal  
12 jurisdiction, or in the alternative, to transfer pursuant to  
13 1404(a), the motion to transfer is granted, that's Number  
14 648.

15 Soundmouse's motion to dismiss, Number 644, is denied  
16 as moot.

17 Plaintiff's motion for jurisdictional discovery, Number  
18 902, Soundmouse, is denied.

19 Defendants' motion to stay -- this is almost all of  
20 you -- motion to stay pending resolution of the transfer  
21 motions is denied. That's Document 1244.

22 Motion to sever has already been taken care of with  
23 Texas Instruments. They settled last night.

24 Now, I can -- I'll leave this list with Ms. Pritchard  
25 here. If anybody has questions about that, when we take a

1 break here in just a minute, we can get into that.

2 Let me also say that motions to transfer will not be --  
3 the effect of those will not be deferred. They'll be  
4 treated like other motions to transfer rulings that are  
5 granted.

6 My thoughts are that I'll go ahead and adopt a full  
7 schedule similar to the ones that the Defendants -- the  
8 two-tier track that you had suggested.

9 I had felt that I would include disclosures similar to  
10 Track B. I want to take a look at that one more time. I  
11 appreciate everybody's comments on those, especially  
12 regarding the early disclosure of your license agreements  
13 from the Plaintiff and sales information from the  
14 Defendants.

15 And the contentions issue, we need to -- I will -- I  
16 think we have way too many contentions and I will take steps  
17 to make sure that those are corralled.

18 Also, in the absence of you reaching some agreements  
19 while I take a break here, I will either appoint a mediator  
20 or a special master to evaluate whether or not subgroups --  
21 further subgroups would be appropriate or if these subgroups  
22 could proceed on the existing schedule but be grouped for  
23 purposes of briefing the various issues like mediation and  
24 possibly for trial. Second, to directly resolve -- of  
25 course, it would be subject to appeal, but to resolve



1 discovery disputes. Third, to resolve any future disputes  
2 that come up ad hoc that make sense to coordinate everyone.

3 And I will tell you that the October 1st construction  
4 conference is -- is the earliest we can get to it, but that  
5 would be on the agenda. That would be the earliest that we  
6 could have that here with your scheduling.

7 And as I mentioned, your motions to stay, we've already  
8 covered those.

9 All right. I'm going to step down here. First of all,  
10 anybody that has represented in court that you've reached  
11 any type of agreement to settle, you can be excused, or if  
12 you're -- if you were fortunate enough to get the ruling  
13 that you wanted and you feel like you've finished your  
14 business with the Court, you may be excused.

15 But the remainder of you, after discussing these  
16 issues, I urge you to take another shot before I come out  
17 and decide just how we're going to do those matters that I  
18 said would either be subject to some type of mediation  
19 and/or a master, and we can talk about just who would be the  
20 master later on. I just want you to be thinking in that --  
21 in that vein though, that that is an alternative the Court  
22 is looking at, because I think it just requires that this be  
23 massaged and we come up with a balanced approach to  
24 efficiently move the case along and in a fair manner.

25 All right. Let me take one look at a piece of paper

1 here that I'm looking at.

2 I'm going to have distributed what I just told you that  
3 I would like you to reach agreement on. I put the -- I made  
4 these notes ahead of time so that -- thinking that -- I  
5 think most of them are still operative.

6 I do want to take a look at the issues I didn't put in  
7 here, the issue about the number of claims. I think we've  
8 got way too many, and if you'll just kind of overlay that in  
9 your discussions with one another.

10 I know it's hard to write down everything that I  
11 mentioned here so I've got you a sheet of paper here that  
12 you can work from and talk for a few minutes.

13 I'll take a break for -- at least until 11 o'clock, and  
14 if you tell me at that time that you still have a matter or  
15 two and you mention what they are, if they make sense to me,  
16 I'll extend that a few more minutes. If not, we'll come out  
17 and have some decisions for you.

18 Anyway, good luck. I again want to compliment you on  
19 your efforts so far and your efforts this morning to help  
20 this go as orderly as possible. Thank you.

21 (Recess.

22 THE COURT: First I want to thank everybody for  
23 helping expedite the procedure. I'm prepared to and I'm going  
24 to order the Scheduling Order for the suppliers. It will be  
25 identical to the ones we just circulated.

1           Let me say that you see some references to paragraphs.  
2       As you well know, I like to give you your schedule, kind of  
3       a calendar up front so you can see it, and I like to  
4       integrate and I do integrate in my order the details,  
5       detailed discussions so that hopefully clarifies any matters  
6       we need to discuss.

7           Now, once we get over to -- I'm going to get you the  
8       customer schedule and I can tell you -- let me tell you this  
9       about it. Once we get over to -- let's turn over to October  
10      15, please. Starting with the deadline to make your final  
11      election of asserted claims, that's where we'll start the  
12      tracks for the customers, and those dates will be as  
13      reflected in the Defendants' requested dates. I'll have  
14      those -- if you want to stick around here, I can have them  
15      for you before you leave. We'll go ahead and finish the  
16      hearing but I can get you copies of them.

17           But basically I'll give you the dates from there on.  
18      Starting on October 15, the next -- that date would be  
19      February the 5th, 2016 for the customers. And then, rather  
20      than read all through them here, I can tell you that we kick  
21      them back all the way to the trial date and you can go all  
22      the way down, and that's in September of 2016 for the trial  
23      date on that.

24           I'll set out the schedules here for you here in a  
25      minute. I just don't want to sit here and bore you and get

1 you the wrong numbers here in the record.

2 Also, if you'll look, one thing I want to point out is  
3 the April 4th deadline, the deadline to make preliminary  
4 election of asserted claims. That's been moved from July  
5 3rd to April 4th.

6 The paragraph reference on -- I think I just mentioned  
7 this, refers to -- any paragraph there, that really refers  
8 to -- I just took this and cut and paste from the order that  
9 I normally give, so don't pay any attention to any  
10 designation of paragraphs.

11 Now, I'm going to -- I'm not going to appoint a master.  
12 What I'm going to do is I'm referring this case to Judge  
13 Craven, who will sit here in Tyler for hearings that are  
14 required, here in Tyler, to the extent you can't do them by  
15 telephone.

16 And you don't need to do anything other than I will  
17 refer it to Judge Craven and I will discuss with Judge  
18 Craven about the need for -- we'll take a look at the issue  
19 of subgroups. I'm not saying it's going to be done but I'm  
20 going to have her take a look at it and we'll work together  
21 on it. We will be talking on it, and I'll just tell you  
22 right now that we will have ex parte conversations because  
23 of the scheduling issues that we work between the two courts  
24 here, and we will be able to I think coordinate and take  
25 care of it. I keep my finger on the pulse of what's going

1 on and stay informed on it, and I have every confidence that  
2 she and I will be thinking pretty much alike on scheduling  
3 issues.

4 Again, I will -- if you wish to stick around here for  
5 awhile, I will go ahead and get you a customer scheduling  
6 order so that -- a pro forma order so that you can work from  
7 that, or we can actually send it to you by e-mail, whatever  
8 you prefer. But we will be working on that here to get that  
9 out here in just a few minutes.

10 All right. Any questions at this point?

11 All right. I again want to thank everybody, and I will  
12 come down and -- I say come down. I'm going to step off the  
13 bench here and meet some of you or say hello to those I  
14 haven't seen in awhile and also meet some of you I haven't.  
15 With that -- yes, sir, Mr. Hill.

16 MR. HILL: Your Honor, before we adjourn, earlier the  
17 Court had granted the motion to dismiss with regard to one of  
18 the two entities I represent, Technicolor SA. The remaining  
19 entity, I have made an agreement with Plaintiff during the  
20 break for a -- to stipulate on the record today to a dismissal  
21 of Technicolor USA, Inc. without prejudice, so I would like to  
22 put that matter on the record.

23 THE COURT: All right, sir. And your opponent? Yes,  
24 sir.

25 MR. GARTEISER: Agreed, Your Honor.

1 THE COURT: All right. Agreed. So done.

2 MR. HILL: Thank you, Your Honor.

3 THE COURT: All right. Thank you. Everybody is  
4 excused, please.

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21 I certify that the foregoing is a correct transcript from  
22 the record of proceedings in the above-entitled matter.

23

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\_\_\_\_\_  
Jan Mason

\_\_\_\_\_  
Date

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